

APPEAL NO. 032300
FILED OCTOBER 20, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 5, 2003. With respect to the issues before her, the hearing officer determined that the appellant (claimant) sustained a compensable injury on _____; that the compensable injury extends to and includes the left ribs and lungs, but does not extend to and include the left shoulder and back; that the respondent (carrier) waived its right to contest compensability by not contesting in accordance with Section 409.021 and 409.022; and that the claimant had disability from October 29, 2002, to February 7, 2003, but did not have disability from February 8, 2003, through the date of the hearing. In his appeal, the claimant contends that the hearing officer's determinations that his compensable injury did not extend to and include the left shoulder and back and that he did not have disability from February 8, 2003, through the date of the hearing are against the great weight of the evidence. In its response to the claimant's appeal, the carrier urges affirmance. The carrier did not appeal the determinations that the claimant sustained a compensable injury on _____; that the compensable injury extends to and includes the left ribs and lungs; and that it waived its right to contest compensability in this instance and those determinations have, therefore, become final pursuant to Section 410.169.

DECISION

Affirmed, as modified.

Initially, we note that the hearing officer's Conclusion of Law No. 7 and the Decision section contain a typographical error. They state that the claimant did not have disability from February 7, 2003, through the date of the hearing. However, the hearing officer found that the claimant had disability from October 29, 2002, through February 7, 2003. Thus, the first date of the period for which the claimant was found not to have disability is February 8, 2003, not February 7, 2003. Accordingly we change the February 7, 2003, date in Conclusion of Law No. 7 and the Decision section to February 8, 2003.

The hearing officer did not err in determining that the compensable injury of _____, does not extend to include the left shoulder or back. Those issues presented questions of fact for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It was a matter for the hearing officer to resolve the inconsistencies and conflicts in the evidence and to decide what facts the evidence has established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In this instance, the hearing officer was not persuaded that the claimant sustained his burden of proving that he injured his left shoulder or back in the fall at work on _____, or that he had disability, as a result of his compensable injury, from February 8, 2003, through the date

of the hearing. Nothing in our review of the record reveals that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

As modified, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **MARYLAND CASUALTY COMPANY, a Division of Zurich North America** and the name and address of its registered agent for service of process is

**LEO MALO
ZURICH NORTH AMERICA
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge